

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3709 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UMEDBHAI BAWABHAI TARPADA

Versus

DISTRICT MAGISTRATE

Appearance:

MR. R.C. KODEKAR FOR MR VIJAY H PATEL for Petitioner
MR. NIGAM SHUKLA, ADDL. G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/10/96

ORAL JUDGEMENT

Mr. R.C. KODEKAR for Mr. Vijay H. Patel,
Advocate, for the petitioner. Mr. Nigam Shukla, Addl.
Government Pleader for the respondents. This Special
Civil Application is directed against the detention order
dated 18.4.1996 passed by the District Magistrate, Kheda,
detaining the petitioner under the provisions of the
Gujarat Prevention of Anti-Social Activities Act, 1985.

The detention order was executed on 19.4.1996 and since then the petitioner is under detention lodged at Bhuj Special Jail, Bhuj. This Special Civil Application was filed on 15.5.1996 and on 17.5.1996 rule returnable for July 24, 1996 was issued. So far neither any reply has been filed nor any affidavit of the detaining authority was filed.

2. The grounds enclosed with the detention order show that 11 criminal cases under Prohibition Act was registered against the petitioner at Police Station, Nadiad Rural, Chaklasi and Mather. Out of which, seven cases pending trial before the court and in four cases the police investigation was going on. The detaining authority has noted that the allegations against the petitioner with regard to unauthorised business of liquor and various offences under the Prohibition Act in which the petitioner has been involved. Besides this, statements of four witnesses have been taken into consideration who deposed against the petitioner with regard to manufacturing and sale of the country liquor. The detaining authority noted that the petitioner was engaged in anti-social activities and used to beat the witnesses who did not co-operate with him in his liquor business. He has been moving with arms and he was a headstrong person and was a known bootlegger. Accordingly, the detention order was passed.

3. The detention order has been challenged on various grounds but at the time of argument, the learned counsel for the petitioner kept his argument confined on the question that with regard to the cases which were pending police investigation the petitioner had not been supplied with the copy of the panchnama, chemical analysis report and copy of the statements of the witnesses which had been recorded by the police. The reference has been made to the case registered at Mather Police Station C.R. No. 348 of 1995 and the cases registered at Nadiad Rural Police Station being C.R. No. 379 of 1995 and C.R. No. 48 of 1996. It has been submitted that they were vital and relevant documents for the purpose of making effective representation.

4. The factual position with regard to non-supply of these documents in the cases as aforesaid which have been taken into consideration against the petitioner has not been disputed by the other side and it is also clear that despite the demand of these documents in the representation made by the petitioner, the same were not supplied. There is no dispute that these documents pertaining to the cases which were pending police

investigation and the petitioner was not having these documents. Thus, non-supply of these vital and relevant documents are considered to be sufficient to infringe the petitioner's rights under Article 22(5) of the Constitution of India for making effective representation. The detention order deserves to be quashed and set aside on this ground alone.

5. Accordingly, this Special Civil Application is allowed. The detention order dated 18.4.1996 passed by the District Magistrate, Kheda, against the petitioner is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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